IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 76685 of 2016

(Arising out of Order-in-Original No. 01/CCE/S. Tax/RKL/2016-17 dated 21.06.2016 passed by the Commissioner, Central Excise Customs & Service Tax Rourkela Commissionerate, KK-42, Civil Township, Rourkela-769004)

M/s. IVT. VLT. CC.(JV) **: Appellant**
Po-Brajrajnagar, Jharsuguda-768201

VERSUS

Commissioner of Central Excise, Customs & Service Tax, Rourkela Commissionerate **: Respondent**
KK-42, Civil Township, Rourkela-769004

APPEARANCE:

Shri Sushil Kumar Goyal, C.A., for the Appellant

Shri D. Sue, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77540/2025

DATE OF HEARING / DECISION:25.09.2025

Order: [PER SHRI K. ANPAZHAKHAN]

M/s. IVT. VLT. CC. (JV) (herein after referred as the Appellant) is a partnership firm having the registered office at Brajrajnagar, Jharsuguda, Orissa 768 216. The Appellant is registered with the service tax department under the category of Cargo Handling Service', bearing Registration No. AAAA12373PST001.

1.1. During the course of the audit, the audit team observed that the service rendered by the appellant during the period from 2009 10 to 2011 12 would be appropriately classifiable under the category of

"Mining of minerals, oil or gas service, as defined under Section 65 (105) (zzzy) of the Finance Act, 1994. As the appellant has not paid service tax under the said category of 'Mining Service', a Show Cause Notice covering the Period 2009 10to 2010-11 was issued to the appellant vide C.No. V/15/26/S.Tax/Adjn/BBSR 11/2012/12812Adated 18.10.2012, demanding Service Tax including Education Cess amounting to Rs 3,49,39,084/-.

1.2. The said Notice was adjudicated vide Order-in-Original No. 01/CCE/S.Tax/RKL/2016-17 dated 21.06.2016 passed by the Commissioner, Central Excise Customs & Service Tax Rourkela, wherein the Ld. Commissioner has confirmed the demand of service tax raised in the Notice, along with interest and equal amount of tax as penalty.

1.3. Aggrieved against the confirmation of the demand of service tax, along with interest and penalty, the appellant has filed this appeal.

2. The appellant submits that the issue involved in the present appeal is classification of service rendered by the appellant to M/s Mahanadi Coal Fields (hereinafter referred to as the "MCF"). The appellant submits that during the period under dispute, they have rendered service to MCF in respect of four work orders. A perusal of the said work orders would reveal that the appellant was engaged in "hiring of pay orders/tippers for mechanical transfer of crushed Coal and transportation of the same from Belpahar OCM stock to "Y" Curve siding No. 4 & 5 at Chinriguda of Lakhanpur Area upto lead of 7-8 KM and transportation of crushed coal from Belpahar OCM CHP to Y-curve siding No. 4 & 5 at Chinriguda of

Lakhanpur Area upto lead of 10-11 KM. The appellant submits that "MCF considered the said service as transportation activity and classified the said service under the category of "Transportation of Goods by Road Agency and accordingly discharged the whole amount of service tax as the service recipient, after claiming the eligible abatement. The appellant submits that the department has not raised any objection for MCF paying service tax for the said services, under the category of 'GTA Services' and accepted the service tax paid by them, as receivers of GTA service. Having accepted service tax under the category of 'GTA Services' for the said services, the department cannot demand service tax under the category of 'Mining Service' for the same service'.

2.1. The appellant referred the definition of the "Mining of mineral, oil or gas service" as provided under sub clause (zzzy) of clause (105) of Section 65 of the Act, and stated that as per the definition, any services provided or to be provided to any person, by any other person in relation to mining of mineral oil or gas would be taxable under this category. However, the term "mining" has not been defined under the Act. Therefore, in order to arrive at the precise meaning of the said term, the appellant referred the definition of the 'Mining' as provided in various dictionaries as under:

i. As per Black's Law Dictionary (6th Edition), the term "Mining" refers to the process or business of extracting from the earth the precious or valuable metals, either in their native state or in their ores.

ii. As per American Heritage Dictionary, the term "Mining" refers to the process or business of extracting ore or minerals from the ground.

iii. As per Oxford English Reference Dictionary, the term "Mining" refers to excavation in the earth for extracting metal, coal, salt, etc., to obtain (metal, coal, etc) from a mine, to dig in (the earth, etc.) for ore, etc.

iv. As per Collins Co Build Dictionary [2006) edition, the term "Mining" refers to the industry and activities connected with getting valuable or useful minerals from the ground for example coal, diamond, or gold.

v. AS per Section 12(1)(e) of Mines Act, 1952 the term "Mines" refers to any excavation where any operation for the purpose of searching for or obtaining minerals had been or is being carried on and includes-

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2.2. A careful perusal of the above definitions would reveal that the term "Mining" refers to the process related to extraction of minerals from the earth. It also includes the infrastructure created for mining of minerals, oil or gas. Thus, the appellant submits that the activities related to the extraction of minerals from the earth and the subsequent processes such as washing, refining, would only be included within the scope of 'mining service' and not each and every activity performed within the mining area would be covered under it's ambit. The appellant submits that the Ld. Adjudicating Authority has erred in giving an extended meaning to the phrase "in relation to" and included the post mining activities of transportation also within the ambit of 'mining service'.

2.3. In support of their contentions, the appellant relied upon the decision of the Hon'ble Bombay High Court in the case of INDIAN NATIONAL SHIPOWNER'S ASSOCIATION VS. UNION OF INDIA (2009(14) S.T.R. 289 (Bom.).

2.4. The appellant submits that they had entered into a contract with MCF to transport coal to the prescribed destinations. The most indispensable element of the said contract was to transport coal. Given the very essence of the contract, the said activities should have been classified under the head, "Goods Transport Agency". The appellant referred the definition of Goods Transport Agency in support of their contention. The nature of the work involved is that of transportation of goods (ie. coal) by road. The appellant is a goods transport agency who has entered into contract with MCF for transportation of coal. Thus, the appellant submits that the activities undertaken by them are appropriately classifiable under the category of "Goods Transport Agency", for which the liability of payment of service tax is on the recipient of service, which is MCF in this case.

2.5. In support of their contentions, the appellant also referred the C. B. E. & C. Circular F No. 232/2/2006-CX.4 dated 12.11.2007 which specifically states that handling and transportation of coal/mineral from pit head to a specified location within the mine/factory or for transportation outside the mine are chargeable to service tax under the relevant taxable services, ie., "Cargo Handling service" and "Goods Transport by Road”.

2.6. Thus, the appellant submits that the demand of service tax under the category of ‘mining service’ from them is not sustainable and hence the same is liable to be set aside.

3. The Ld. A.R. reiterated the findings in the impugned order.

4. Heard both sides and perused the appeal documents.

5. We observe that the appellant is a "Goods Transport Agency”. They have been engaged by MCF in "hiring of pay orders/tippers for mechanical transfer of crushed Coal and transportation of the same upto 10-11 Kms. We observe that it is on record that MCF considered the said service as transportation activity and classified the said service under the category of "Transportation of Goods by Road and accordingly discharged service tax as the service recipient, after claiming the eligible abatement. We observe that the department has not raised any objection for MCF paying service tax for the said services, under the category of ‘GTA Services’ and accepted the service tax paid by them. Having accepted service tax under the category of ‘GTA Services’ for the said services, the department cannot demand service tax under the category of ‘Mining Service’ for the same service’.

5.1. From the impugned order, we observe that the Ld. Adjudicating Authority has considered the said activity carried out by the appellant during the material period as a taxable service leviable to tax under the head 'Mining Service'. The Ld. Adjudicating authority has reached that conclusion on the basis of his interpretation of the phrase "in relation to" used in the definition of 'mining service'. For ready reference, the definition of "Mining of mineral, oil or gas service" as provided under sub clause (zzzy) of clause (105) of Section 65 of the Act, which is reproduced below:

> "any services provided or to be provided to any person, by any other person in relation to mining of mineral oil or gas."

5.2. The Ld. Adjudicating authority considered that the term 'in relation to' figuring in the definition is very wide enough to include all the activities ranging from pre mining activities to post mining activities. We observe that the term "mining" has not been defined under the Finance Act. Therefore, in order to arrive at the precise meaning of the said term, we referred the definition of the 'Mining' as provided in various dictionaries and in Section 12(1)(e) of Mines Act, 1952. A careful perusal of the above definitions mentioned in para 2.1 supra, reveals that the term "Mining" refers to the process related to extraction of minerals from the earth. It also includes the infrastructure created for mining of minerals, oil or gas. Thus, we observe that the activities related to the extraction of minerals from the earth and the subsequent processes such as washing, refining, would only be included within the scope of 'mining service' and not each and every activity performed within the mining area would be covered under it's ambit. Thus, we observe that the Ld. Adjudicating Authority has erred in giving an extended meaning to the phrase "in relation to" and included the post mining activities of transportation also within the ambit of 'mining service'. In support of this view, we rely upon the decision of the Hon'ble Bombay High Court in the case of INDIAN NATIONAL SHIPOWNER'S ASSOCIATION VS. UNION OF INDIA (2009(14) S.T.R. 289 (Bom.).

5.3. In the present case, we observe that the appellant had entered into a contract with MCF, by means of four work orders, to transport coal to the prescribed destinations. On perusal of the work orders, we observe that the most indispensable element of the said work orders were to transport coal. Given the very essence of the work orders, we observe that the said activities undertaken by the appellant are rightly classifiable under the category of the taxable service namely, "Goods Transport Agency" service. It is very clear that the nature of the work involved in the said work orders is that of transportation of goods (i.e. coal) by road. We also observe that the appellant is a goods transport agency who has entered into contract with MCF for transportation of coal. Thus, we hold that the activities undertaken by them are appropriately classifiable under the category of "Goods Transport Agency", for which the liability of payment of service tax is on the recipient of service, which is MCF in this case.

5.4. In support of the above view, we also refer the C. B. E. & C. Circular F No. 232/2/2006-CX.4 dated 12.11.2007 which specifically states that handling and transportation of coal/mineral from pit head to a specified location within the mine/factory or for transportation outside the mine are chargeable to service tax under the relevant taxable services, ie., "Cargo Handling service" and "Goods Transport by Road”.

5.5. In view of the above findings, we hold that the demand of service tax from the appellant under the category of ‘mining service’ is not sustainable and hence we set aside the same.

5.6. As the demand of service tax is not sustained, the question of demanding interest or imposing penalty does not arise.

6. In the result, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law.

(Operative part of Order was pronounced in Open court)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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